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PATENT APPLICATION

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

GROUP ART UNIT: 1794

EXAMINER: VIREN A. THAKUR

In re application of: Aaron Strand,)
et al.)

Application No: 09/804,403)

Filed: 03/12/2001)

Confirmation No.: 1089)

Attorney Docket No. 8362-DIV)

Customer No. 22922)

For: A RESEALABLE BAG FOR
FILLING WITH FOOD
PRODUCT(S) AND METHOD

Commissioner for Patents
MAIL STOP APPEAL BRIEF-PATENTS
P.O. Box 1450
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REPLY BRIEF

Sir:

Appellants, in response to the Examiner's Answer mailed June 29, 2009, and
pursuant to 37 C.F.R. § 41.41, hereby files this Reply Brief as part of the appeal on the
above-referenced patent application.

Reply to the Examiner -- Introduction

While the Examiner's Answer reiterates much of the September 5, 2008, Office Action, the Examiner has further elaborated on several of the arguments that were made in the September 5, 2008, Office Action. However, the Examiner's Answer does not remedy the two separate points on which the rejections of the present independent claims are legally insufficient. The rejections under Section 103(a) are legally insufficient because the Belmont et al. reference, alone or in combination with the Stolmeier et al. reference, the Herrington et al. reference, the Kuge et al. reference, the Buchman reference, and the Van Erden et al. reference, does not disclose all of the elements required by the present claims, namely a single sheet of web material including a fold and areas of structural weakness. Moreover, the Belmont et al. reference, alone or in combination with the other references cited by the Examiner, does not teach or suggest a sealed notch, as required by the present claims.

Observations and Arguments

Claim 1 of the present application requires, among other limitations, a single sheet of web material, a fold, two areas of structural weakness that are respectively located on opposite sides of said fold, and a reclosable fastener. Notches with sealed peripheries formed in the reclosable fastener defining where a corner portion of said reclosable fastener structure that includes an end portion of said releasably engageable tracks has been removed are also required. The releasably engageable tracks of the reclosable

fastener structure are also required to extend past the areas of structural weakness and into the fold structure.

I. Single sheet of web material, fold, and areas of structural weakness.

Appellants' first argument, which was made independently with respect to each of independent Claims 1, 75, 104, 125, and 144, was that the Belmont et al. reference, alone or in combination with the Stolmeier et al. reference, does not teach or suggest a single sheet of web material, a fold, and areas of structural weakness located on opposite sides of the fold. Appellants also argue that there is no teaching or suggestion anywhere in the Belmont et al. reference to combine selected elements with selected elements of the Stolmeier et al. reference.

The Examiner used the Belmont et al. reference to teach a fold 52. The Examiner stated that this fold 52 forms a hood over the fastener structures. The Examiner conceded that the Belmont et al. reference fails to teach or disclose areas of weakness defined on either side of the fold, as well as releasably engageable tracks of the reclosable fastener structure extending past the areas of structural weakness and into the fold structure.

Assuming *arguendo* that fold 52 of the Belmont et al. reference forms a hood over the fastener structure, there would be no need to include a second hood, made from a completely separate piece of material, as taught by the Stolmeier et al. reference, to the already hooded bag of the Belmont et al. reference.

Furthermore, the Examiner stated that "the Stolmeier et al. reference was relied on to teach the concept of providing a tamper evidence enclosure (i.e. hood) that

encompasses the reclosable fastener and which further provides lines of structural weakness therein for the purpose of facilitating removal of the hood" Claim 1 of the present application requires a bag made of a "single sheet of web material" with a fold made in this single sheet, and areas of structural weakness formed in this single sheet of web material. Therefore, the Stolmeier et al. reference, alone or in combination with the Belmont et al. reference, simply does not teach or suggest this limitation of Claim 1 because the Stolmeier et al. reference discloses a separate tamper evident sheet 60.

The Examiner also attempted to illustrate motivation to combine the Belmont et al. reference with the Stolmeier et al. reference, stating "one would have to provide some integral or external (i.e. scissors) mechanism for opening or removing at least a portion of a hood/covering element of the single sheet of web material." However, this simply does not explain why one having ordinary skill in the art would add a second, separate hood to the Belmont et al. reference.

The Examiner also stated

"[t]o therefore modify Belmont et al., who already teach a hood that is formed from the single sheet of web material and place lines of structural weakness at the positions taught by Stolmeier et al. would therefore have been an obvious matter of choice and/or design as well as for facilitating improved access to the zipper and the contents therein."

This statement is merely conclusory and does not adequately explain why one having ordinary skill in the art would combine the integral sheet of the Belmont et al. reference with a separate, additional hood of the Stolmeier et al. reference having perforations. The

Examiner is using hindsight and the Appellant's own specification to select and combine disparate elements of various references, while ignoring incompatible portions of the references, which is improper. See MPEP 2142.

Therefore, the Belmont et al. reference, alone or in combination with the Stolmeier et al. reference does not teach or suggest a single sheet of web material with a fold and areas of structural weakness on opposite sides of the fold, as required by the present Claim 1. Because the references cited by the Examiner do not teach or disclose each and every limitation of the present Claim 1, the rejection of Claim 1 should be reversed.

The same argument was made independently with regards to independent Claims 75, 104, 125, and 144. The Examiner's rejection is legally insufficient and should be reversed with regards to Claims 1, 75, 104, 125, and 144, and all claims dependent thereupon.

II. Notches defined in reclosable fastener structure, periphery of notches sealed.

The Examiner confusingly stated, "[t]he claims further differ in specifically reciting wherein the reclosable fastener structure has a notch located at a corner at each of side [sic] first and second ends . . . wherein the periphery of said notches has been sealed," see pg. 7, seemingly conceding that the Belmont et al. reference does not disclose notches including sealed peripheries as required by Claim 1 of the present application. However, the Examiner then stated "[t]his can be considered a notch since the portion of the reclosable fastener structure that includes an end portion it [sic] is not the same length as the rest of the fastener structure." See pg. 8. The Examiner then

stated "[r]egarding the sealing of the periphery of the notches, the combination of the prior art is not clear in this regard." See pg. 8.

The Examiner also seemed to concede that if the bag of the Belmont et al. reference is completely sealed then there could be no teaching or suggestion in the Belmont et al. reference to combine its bag with the further sealing steps of the other cited references. This is inferred by the fact that the Examiner did not argue that there was any teaching or suggestion to combine the Belmont et al. reference with the other references other than by stating that "sealing the fins 28 and 34 to the walls 16 and 18 does not necessarily mean that the fins are sealed to each other."

Therefore, it seems that in order for the Belmont et al. reference to teach or suggest combination with the further sealing aspects of the other references cited by the Examiner, the bag of the Belmont et al. reference must have openings in the sides of the top of the bag. One having ordinary skill in the art would realize that the Belmont et al. reference does not teach a resealable bag with two holes in the top that cannot be resealed, because such a bag would not be functional. Therefore, if the bag of the Belmont et al. reference is completely sealed, as one having ordinary skill in the art would see from reading the Belmont et al. reference, then the Belmont et al. reference would teach away from combination with a further sealed portion of the other references cited by the Examiner.

The Examiner further stated that FIG. 1a of the Herrington et al. reference teaches that "the reclosable track (19) comprises a notch, since the top portion of the track is not

the same length as the bottom portion (30a)." The Examiner stated that the ends of the fastener tracks have been fused together "for the purpose of preventing the slider from falling off the end of the track (column 4, lines 51-53)." This illustrates that the Examiner is misconstruing the terms "notch" and "sealed periphery" as defined by the specification of the present application. The Examiner stated throughout the Answer, see, e.g., pg. 19, that the references cited teach that it is "desirable to seal the ends of the track for the purpose of retaining the slider on the track."

A notch is not simply a discontinuity in the track, as is illustrated in the Herrington et al. reference. A notch is a radiused portion missing from the fastener assembly. See page 21, lines 20-27 of the specification. Claim 1 of the present application requires that the periphery of the notch be sealed, not just that the zipper tracks be fused, as in the Herrington et al. reference. The Belmont et al. reference, the Herrington et al. reference, and the other references cited by the Examiner simply do not disclose a notch with a sealed periphery as required by the present Claim 1, but instead merely seal the ends of zipper tracks.

The same argument was made independently with regards to independent Claims 75, 104, 125, and 144. The Examiner's rejection is legally insufficient and should be reversed with regards to Claims 1, 75, 104, 125, and 144, and all claims dependent thereupon.

Accordingly, Appellant believes that the independent claims of the present application are drafted in a manner which clearly defines them over the prior art related to the absence of elements from independent Claims 1, 75, 104, 125, and 144, as well as a lack of motivation to combine the portions of the references cited by the Examiner. The absence of any claim element from the references cited by the Examiner is independently sufficient to overturn the Section 103(a) rejection of independent Claims 1, 75, 104, 125, and 144. As such, all of the dependent claims are believed to be patentable as well. Appellant believes that the invention as presently claimed is novel and nonobvious over the cited art as well as all other art of which Appellants are presently aware. Appellants accordingly respectfully request the removal of the rejection of pending Claims 1, 2, 6-9, 14, 16, 18, 19, 75, 79, 82-86, 93, 104, 107-112, 122-128 , and 130-147, and the allowance of the present application.

Respectfully submitted:

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